



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

February 15, 1996

The Honorable Mark W. Stiles
Chair
Calendars Committee
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 96-012

Re: Disposition of property seized by a
sheriff and forfeited under chapter 59, Code
of Criminal Procedure (ID# 38374)

Dear Representative Stiles:

You have requested our opinion regarding the disposition of property seized and forfeited pursuant to chapter 59, Code of Criminal Procedure. Specifically, you ask whether, under those provisions, a sheriff may take title to a building, or may use proceeds therefrom to purchase a building.

Article 59.02, Code of Criminal Procedure, provides in part that "[p]roperty that is contraband is subject to seizure and forfeiture under this chapter." "Contraband" is defined to mean "property" that either (1) is used in the commission of various felonies listed in article 59.01; (2) consists of "proceeds gained" from the commission of those felonies; or (3) is "acquired with proceeds gained" from the commission of such felonies. Code Crim. Proc. art. 59.01. "Contraband" includes "*property of any nature, including real, personal, tangible, or intangible.*" (Emphasis added.)

Property seized as contraband under chapter 59 may be disposed of in accordance with article 59.06, which provides, in pertinent part:

(b) If a local agreement exists between the attorney representing the state and law enforcement agencies, the attorney representing the state may transfer the property to law enforcement agencies to maintain, repair, use, and operate the property for official purposes if the property is free of any interest of an interest holder. The agency receiving the forfeited property may purchase the interest of an interest holder so that the property can be released for use by the agency. The agency receiving the forfeited property may maintain, repair, use, and operate the property with money appropriated for current operations.

You indicate that a “local agreement” exists between the sheriff’s office and the relevant prosecutor. So long as the procedural requirements of articles 59.02 through 59.05 are followed, article 59.06 makes clear that the sheriff may be the transferee of any property seized as contraband in accordance with the provisions of chapter 59. Since, as we have noted, such “property” includes real property, it follows that the sheriff, under the proper circumstances, may take title to a building seized under that chapter.

If the “property” consists of “proceeds from the sale” of a building seized by the sheriff under chapter 59, article 59.06 requires that such proceeds “shall be deposited according to the terms of the agreement” into “a special fund in the county treasury . . . to be used solely for law enforcement purposes.” *Id.* art. 59.06(c). The proceeds

may be spent by the [law enforcement] agency... after a budget for the expenditure of the proceeds has been submitted to the commissioners court.... The budget must be detailed and clearly list and define the categories of expenditures, but may not list details that would endanger the security of an investigation or prosecution.

Id. art. 59.06(d). The commissioners court is prohibited from using “the existence of an award to offset or decrease total salaries, expenses, and allowances that the agency . . . receives from the commissioners court . . . at or after the time the proceeds are awarded.” *Id.* On the other hand, the sheriff “may not use the existence of an award to increase a salary, expense, or allowance for an employee . . . who is budgeted by the commissioners court . . . unless the commissioners court . . . first approves the expenditure.” *Id.* Furthermore, the commissioners court is entitled to require the sheriff “to deposit not more than a total of 10 percent of the gross amount” of the proceeds “into the [county] treasury,” to be used for drug and alcohol abuse, rehabilitation, or prevention programs, or for the operation of certain “nonprofit chemical dependency treatment facilities.” *Id.* art. 59.06(h).

Thus, in answer to your specific question, we hold that the sheriff may use the proceeds from the sale of property seized as contraband under chapter 59 for the purchase of a building, *provided* he first submits a detailed list of all such expenditures to the commissioners court, and *subject to* the commissioners court’s requirement, if exercised, that he deposit not more than ten percent of those proceeds in the county treasury for use on behalf of the chemical dependency programs described in subsection (h) of article 59.06.

S U M M A R Y

When there exists a "local agreement" between a prosecutor and a sheriff pursuant to the terms of chapter 59, Code of Criminal Procedure, the sheriff, so long as the procedural requirements of that chapter have been followed, may take title to a building seized as contraband under that chapter. The sheriff may use the proceeds from the sale of property seized as contraband thereunder to purchase a building, provided he first submits a detailed list of expenditures to the commissioners court, and subject to the commissioners court's requirement, if exercised, that he deposit not more than ten percent of those proceeds in the county treasury for use on behalf of the chemical dependency programs described in subsection (h) of article 59.06.

Yours very truly,

A handwritten signature in black ink, appearing to read "Rick Gilpin", written in a cursive style.

Rick Gilpin
Deputy Chief
Opinion Committee